IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NANCY HAMMER,	)	
	)	Civil Action No. 01-0564
Plaintiff,	)	
	)	Judge William L. Standish
v.	)	
	)	U.S. Magistrate Judge:
CARDIO MEDICAL PRODUCTS, INC.,	)	Robert C. Mitchell
	)	
Defendant.	)	

MOTION TO COMPEL

NOW COMES Defendant, Cardio Medical Products, Inc., by and through its attorneys, PLUMMER & FINNERTY, LLP, pursuant to Federal Rule of Civil Procedure 37(d)(1) and the Local Rule of the United States District Court for the Western District of Pennsylvania 37.1, and makes the within Motion to Compel:

1. On September 2, 2005, Defendant Cardio Medical Products, Inc. ("Cardio Medical"), served on Plaintiff Nancy Hammer ("Hammer") a Notice of Deposition noticing her deposition for September 14, 2005, at 1:30 p.m. A true and correct copy of the Notice of Deposition is incorporated herein and attached hereto as Exhibit "A".

2. On September 12, 2005, Hammer advised counsel for Cardio Medical that she would not be appearing for the deposition on September 14, 2005.

3. When asked when she could be available for her deposition, Hammer responded that she did not believe that she was required to appear for a deposition, and, even if she was required to appear for a deposition, as a result of her heavy work schedule there was no time this month when she would be available for her deposition.

4. Counsel for Cardio Medical attempted to resolve this matter with Hammer, but Hammer informed counsel that she would be unavailable on every day during normal business hours and would therefore be unable to appear.

5. Counsel for Cardio Medical could not resolve this matter and has provided the Court with a Discovery Dispute Certificate. A true and correct copy of the Discovery Dispute Certificate is incorporated herein and attached hereto as Exhibit "B".

6. There is currently an Order of the Court imposing a discovery deadline in this matter on September 30, 2005, relating to the equitable tolling issue.

WHEREFORE, Defendant Cardio Medical Products, Inc., respectfully requests that this Honorable Court order Plaintiff Nancy Hammer to appear for her deposition on a date certain or, in the alternative, at a time convenient for both parties before the discovery deadline has expired.

Respectfully submitted:

Dated: September 12, 2005

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